IN THE HIGH COURT OF JUDICATRE AT MADRAS

DATED:04.04.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE J.A.K. SAMPATHKUMAR

H.C.P.No.236 of 2006

J. Sumitha .. Petitioner

vs.

1. The Secretary to the Government
   Food, Co.operation and Consumer
   Protection Department
   Chennai 600 009.

2. The District Magistrate &
   District Collector
   Coimbatore District
   Coimbatore.

3. The Secretary to Government
   Food and Consumer Protection Department
   Government of India
   New Delhi. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas corpus as stated therein.

For petitioner : Mr. B. Kumar, Senior counsel
for Mr. C. Prakasam

For respondents: Mr. Abudukumar Rajarathinam
1 & 2 Govt. Advocate (Crl.side)

Mr. P. Kumaresan
ACGSC for R.3

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ORDER
(ORDER of the Court was made by P.SATHASIVAM,J.)

The petitioner by name J. Sumitha, wife of the detenu Janarthanan, who was detained as a "Black Marketer" under Section 3 (2) (b) read with 3 (1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, by the impugned proceedings dated

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08.02.2006, challenges the order of detention in this petition.

2. Heard Mr. B. Kumar, learned senior counsel for the petitioner, Mr. Abudukumar Rajarathinam, learned Government Advocate for respondents 1 and 2 and Mr. P. Kumaresan, learned Additional Central Government Standing counsel for third respondent.

3. After taking us through the grounds of detention and other connected materials, learned senior counsel for the petitioner has raised the following contentions:

> "(i) A reading of the confession statement of the detenu does not show that he is in possession of rice bags pertaining to Public Distribution System (in short PDS). This relevant aspect has not been considered by the Detaining Authority while passing the order of detention, accordingly, the impugned detention order is liable to be interfered on the ground of non-application of mind. He also contended that since the detenu has not purchased PDS rice from the public, the relevant provision, viz., 6(4) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order, 1982 (in short "Control Order") is not applicable to the case of the detenu.
>
> (ii) Though the Detaining Authority has heavily relied on the Quality certificate, certain English portions of it have not been properly translated in Tamil and supplied to the detenu, hence, the detenu is not a position to understand and make effective representation.
>
> (iii) Though an amendment / corrigendum was passed by the District Collector on 10.02.2006, Tamil version of the same has not been furnished to the detenu, who knows only Tamil, which also vitiates the impugned detention order.
>
> (iv) The amendment/corrigendum dated 10.02.2006 of the District Collector was not placed before the Government and there is no material to show that the Government considered the same before passing an order of approval on 15.02.2006."

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4. Learned Government Advocate by placing relevant materials met all the points.

5. Coming to the first contention, viz., non-application of mind on the part of the Detaining Authority, learned senior counsel for the petitioner heavily relied on the confession statement of the detenu dated 03.02.2006, which is available at pages 77 and 79 of the paper book supplied to the detenu. By drawing our attention to the above said confession statement of the detenu, learned senior counsel has stated that after the sale of the PDS rice to the persons intended, anybody can deal with the rice, including the purchase and sale from the persons concerned. It is also his claim that in such an event it will not have an impact on the PDS. On going through the confession statement of the detenu and the relevant provision, viz., 6(4) of the Control Order, we are unable to accept the said contention. In this regard, it is useful to extract a portion of the confession statement of the detenu made on 03.02.2006, which reads as under.

ஞஎன் பெயர் K.P, ஜனார்த்தனன். எனக்கு வயது 39. எனது அப்பா பெயர் கந்தசாமி பாண்டி நாடார். எனது சொந்த ஊர் திருநெல்வேலி மாவட்டம் திசையன்விளையாகும். நான் பொள்ளாச்சியில் கடந்த 20 வருடங்களாக வசித்து வருகிறேன். கடந்த 15 வருடங்களாக ரேஷன் அரிசி கடத்தும் தொழில் செய்து வருகிறேன். என் மீது ஏற்கனவே ரேஷன் அரிசி கடத்தியதற்காக கேஸ் போட்டுள்ளார்கள். தொடாந்து நான் இந்த ரேஷன் அரிசி கடத்தும் தொழிலை செய்து வருகிறேன். கடந்த 2.2.06ந் தேதி அன்று எனக்கு நன்கு தெரிந்த அரிசி புரோக்கர் மணி என்கிற ஆணைமலை மணி என்பவர் தாராபுரத்தில் சுற்றுவட்டாரத்தில் உள்ள மக்களிடம் சிறுகசிறுக விலைக்கு வாங்கிய ரேஷன் அரிசி சுமார் 10 மூட்டைகள் உள்ளதாகவும் அதை ஒரு வீட்டின் அருகில் வைத்திருப்பதாகவம் கூறினார். அதன்படி பொள்ளாச்சி விஜய் என்பவரிடம் T.N. 49 Z 8943 என்ற 407 வேனை வாடகைக்கு எடுத்தேன். மேற்படி வண்டியின் உரிமையாளர் திரு.விஜய் என்பவர் எனது தம்பியாவார். அந்த வேனை டிரைவர் பிரபாகரன் என்பவர் ஏற்கனவே நாங்கள் சொன்னபடி ஆணைமலையிலிருந்து எடுத்து தாராப ,ரத்திற்கு எடுத்து சென்று நான் கூறிய இடத்தில் வந்தார். நான் ஆணைமலை மணி என்பவர் சொன்ன இடத்தில் இருந்த 100 மூட்டைகள் ரேஷன் அரிசியை ஆணைமலை மணி உதவியுடன் லோடு ஏற்றிக் கொண்டு கோசல் பாளையம் வழியாக போனால் அங்கு லோகநாதன் என்பவர் இருப்பார். அவர் போலீஸ் உள்ளதா என்று சொல்லுவார். அங்கிருந்து இருவரும் நடுப்புளி வழியாக கேரளாவ ,க்கு கடத்தி செல்லுங்கள் என்று கூறி ஏற்ற

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சொல்லிவிட்டு நான் இரவோடு இரவாக பொள்ளாச்சி வீட்டிற்க்கு வந்துவிட்டேன். காலையில் சுமார் 09.00 மணியளவில் அரிசியுடன் வந்த வண்டி மற்றும் டிரைவர் பிரபாகரன் வேலையாள் லோகநாதன் ஆகியோர் வடக்கிபாளையம் என்ற இடத்தில் ப ட்டுசெல் போலீசார் பிடித்து விட்டதாக கேள்விபட்டு சுமார் 12.00 மணிக்கு வடக்கிபாளையம் ஜங்ஷன் அருகில் என்ன நடக்கிறது என்று தெரிந்து கொள்ள வரும்போது புட்டுசெல் போலீஸ் ஆய்வாளராகிய தாங்கள் என்னை கைது செய்து விசாரணை செய்தீர்கள். எனக்கு சொந்தமான கேரளாவிற்கு கடத்த இருந்த TN49 Z 8943 என்ற வாகனத்தையும் அதிலிருந்த அரிசியையும் அடையாளம் காட்டினேன். "

The above statement shows that he was doing rice business for the past 15 years and he also admitted that the respondents have filed cases against him for smuggling of PDS rice. It further shows that his agents have purchased PDS rice from various persons and after storing the same to a sizeable position, handed over to the detenu for smuggling the same to other places, such as Kerala.

6. Relevant provision under which the detenu was charged is 6(4) of the Control Order. The said clause reads as under.

"6. Supply of Scheduled Commodities.- (1) No person shall obtain in any scheduled commodities on a family card unless he-

(i) registers himself with an authorised dealer, and

(ii) Complies with any other directions which may be issued in this behalf by the Government, the [Commissioner of Civil Supplies and Consumer Protection], the Collector, the Authorised Officer, or the Inspecting Officer as the case may be.

2. ....

3. ....

4. No person shall purchase any scheduled commodity obtained on a family card. "

It is also useful to refer the object and reasons for passing Tamil Nadu Scheduled Commodities (Regulation and Distribution by Card System) Order 1982.

"Whereas the State Governments are of opinion that for securing equitable distribution of essential commodities, it is necessary and expedient to regulate the distribution of family card;"

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Thus the object makes it clear that in order to secure equitable distribution of essential commodities, the State Government has passed the above order. In the light of the above provisions and in view of the confession statement of the detenu, it cannot be claimed that the act of the detenu will not have an impact on PDS. When the PDS rice is intended for poor and weaker sections of the Society, the same should be utilised by them only and it should not be diverted to others; the deviation or violation of the above object undoubtedly will have an impact on PDS. In such circumstances, we are of the view that the conclusion arrived at by the Detaining Authority cannot be faulted with; accordingly, we reject the first contention.

7. Coming to the second contention relating to quality certificate, the said certificate is available at page 131 of the paper book. We verified the same. The said certificate was certified by Assistant Quality Inspector and Deputy Manager (Quality Control), after proper examination relating to the quality and identity of the rice seized from the detenu. Further, it contains details relating to refractions and percentage. After mentioning the percentage in numerical value, the persons who issued the said certificate have also noted the same in words. Though it is stated that the same are not readable and not translated in the language known to the detenu, as rightly pointed out by the learned Government Advocate, apart from the quality certificate, statements of two officers, viz., S. Soundar Rajan, Assistant Quality Inspector and R. Marimuthu, Deputy Manager (Quality Control) have been enclosed along with the said certificate. The above said statement of two officers makes it clear that sample rice seized from the detenu was handed over to them and after examination, they arrived a conclusion that the seized rice is intended for PDS and issued certificate for the same. The statements of both the officers are available at pages 133 and 135 of the paper book and the same are in Tamil. If we read the contents of the Quality certificate as well as the statements of both the officers, who issued the said certificate, we are satisfied that there will not be any confusion or doubt in understanding the contents of the same. Accordingly, we are unable to accept the second contention raised by the learned senior counsel for the petitioner.

8. Coming to the third contention, it is true that after the order dated 08.02.2006, the District Magistrate / District Collector, Coimbatore has passed an amendment dated 10.02.2006. The said amendment relates to para 3 of the detention order dated 08.02.2006. A perusal of the amendment dated 10.02.2006 shows that while describing the relevant provisions it gives power to the authority for passing the order. In the order dated 08.02.2006 it is stated that "Now therefore in exercise of

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the powers conferred under Section 3(2)(b) read with 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980." In the amendment order dated 10.02.2006, the same has been clarified as 3(2)(a). It is true that while passing the amendment on 10.02.2006, the District Magistrate has not furnished the Tamil version of the said order. Learned Government Advocate rightly pointed out that even in the order dated 08.02.2006, the mistake relating to the provision occurred only in English version of the detention order and in the Tamil version the same has been correctly stated as 3(2)(a). In such circumstances, even in the absence of supply of Tamil version of the amendment order dated 10.02.2006, we are of the view that the detenu is no way prejudiced in making representation. Accordingly, we reject the said contention also.

9. Finally, learned senior counsel for the petitioner submitted that the amendment dated 10.02.2006 was not placed before the Government at the time of passing of order approving the detention order dated 08.02.2006. We verified the approval order of the Government dated 15.02.2006. Though in the preamble of the order the Government have referred to the order of the District Magistrate/District Collector dated 08.02.2006, in the body of the order (even in first paragraph) there is a specific reference to the correct provision, viz., 3(2)(a). In such circumstances, it cannot be contended that the Government had not taken note of the amendment dated 10.02.2006. Accordingly, we reject the said contention also.

In the light of what is stated above, we do not find any error, infirmity or valid ground for interference. Consequently, this habeas corpus petition fails and the same is dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to the Government
   Food, Co.operation and Consumer
   Protection Department
   Chennai 600 009.

2. The District Magistrate &
   District Collector
   Coimbatore District
   Coimbatore.

3. The Secretary to Government
   Food and Consumer Protection Department
   Government of India
   New Delhi.

4. The Superintendent
Central Prison, Coimbatore

5. The Public Prosecutor
Madras

+ one cc to Mr. c. Prakasam, Advocate sr no. 16829

RL(CO)
NM(18.04.2006)

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